REMARKS

Claims 1 – 21 are pending in this application.

Claims 1 – 21 have been rejected.

Claims 1 and 21 are currently amended.

Amendments to the Claims

Claims 1 and 21 have been amended to clarify the claims by reciting that the coil/means for recharging has a major plane (line 8 of each claim) and that the proximal face of the housing is co-planar with the major plane of the recharging coil (claim 1, lines 10 – 11 and claim 21, lines 11 – 12). These amendments are supported at page 5, lines 4 – 14 and in Figures 4, 5a, 5b, 6a, 6b, 7a, 7b, 8a and 8b. No new matter has been added.

Claim 2 has been amended to clarify antecedent basis for "the proximal face of the housing." No new matter has been added.

Affidavit

The Office Action repeats earlier assertions regarding the facts established in the Kast Affidavit and that because the facts in the Kast Affidavit were not incorporated into the specification the facts are essentially disregarded for the purposes of examination. However, it is noted that because the rejection under 35 U.S.C. § 103(a) has been replaced with a rejection under 35 U.S.C. § 102(e), it is respectfully submitted that arguments related to the obviousness of placement of the coil are not pertinent to any rejection in the Office Action.

Nevertheless, Applicant reemphasizes that the Examiner is not entitled to dismiss the ability of the Applicant to submit evidence of the criticality and unexpected nature of the subject matter of claims 1 and 21 by way of an affidavit, if doing so were necessary in view of the actual rejections. The Examiner asserts that "if placement of the recharging coil concentrically on a proximal face of the housing was critical or if it proved unexpected results, it is maintained that the Applicant would have made this point in the instant specification." The Applicant is fully entitled to establish facts in the affidavit that were

omitted in the specification, and the Examiner is bound to consider the facts as they are provided. *See, e.g., Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 1538 (Fed. Cir. 1983), cited in MPEP 716.01(a). Whether or not the Applicant included a discussion in the specification of the criticality or unexpectedness of centrally locating the recharging coil on a proximal face of the housing or not, the discussion is now in evidence in the affidavit and is entitled to full consideration by the Examiner.

Rejections under 35 U.S.C. § 102

Claims 1 – 17 and 19 – 21 have been rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,154,677 ("Leysieffer '677"). These rejections are respectfully traversed.

Leysieffer '677 discloses various embodiments of an implantable device with a charging current feed arrangement which has a receiving coil. In one embodiment, the implantable device has a main module 56 with a housing 72 containing electronics and a battery (column 3, line 63 – column 4, line 22). The implantable device includes other modules, such as sensor 60 and actuator 70, which are coupled to the main module 56 via coupling element 64 (column 3, line 4 – column 4, line 19). A receiving coil 106 is a part of a unit 105 which is covered by a polymer jacketing 104 and "connected mechanically tightly" to the main module housing 72 "on the side facing away from coupling element 64" (column 4, lines 49 – 52). But in this and other embodiments illustrated in Figures 2 – 7 and 9 the receiving coil 106 is not centrally located on a proximal face of the housing of implantable medical device, the proximal face of the housing being co-planar with the major plane of the coil. Rather, in each case, receiving coil 106 is "attached laterally to the main housing" (column 6, line 38, emphasis added), as in Figures 1 – 4, and 7, is located on a side face as in Figures 5 and 6, or is located in a module entirely separate from the housing of the implantable medical device as in Figure 9.

In an embodiment illustrated in a side-view of Figure 8, the receiving coil 106 is "seated on a broad side of the main module housing 132" (column 6, line 40). While the side profile suggests that the receiving coil 106 is centrally located in one dimension, i.e., laterally from the perspective of the drawing, Leysieffer '677 does not show, disclose or suggest that

the receiving coil is centrally located in the other dimension, i.e., depth from the perspective of the drawing. As such, it would be speculation to assert that the disclosure of Figure 8 is that the receiving coil is centrally located. Leysieffer '677 merely discloses that the receiving coil is seated on a broad side of the housing. Moreover, Leysieffer '677 discloses that when the receiving coil is seated on a broad side of the housing that other components such as battery 90 are not located in the housing 132. Thus, Leysieffer '677 does not show, disclose or suggest that the receiving coil is located on a proximal face of the housing while the battery is located in the housing.

The disclosure of Leysieffer '677 is fundamentally different from the subject matter of claims 1 and 21. Claim 1, as amended recites "a rechargeable power source carried in the housing interior cavity" (claim 1, lines 7 – 8), a "recharging coil having a major plane and being centrally located and substantially carried on the proximal face of the housing" of the housing of the implantable medical device (claim 1, lines 9 – 10), and that the proximal face of the housing is co-planar with the major plane of the recharging coil (claim 1, lines 10 – 11). Claim 21, as amended, recites "a rechargeable power source carried in the housing interior cavity" (claim 21, lines 7 – 8) and a "means for recharging having a major plane and being carried on the proximal face of the housing" (claim 21, lines 8 – 9) and "means for attaching the means for recharging to a position centrally located and substantially carried on the proximal face of the housing, the proximal face of the housing being co-planar with the major plane of the recharging coil" (claim 21, lines 10 – 12). Leysieffer '677 does not show, disclose or suggest a recharging coil centrally located and substantially carried on a proximal face of the housing, the proximal face of the housing being co-planar with the major plane of the recharging coil, disclosing only that it may be carried on a broad side of the housing, which is clearly not co-planar. Moreover, Leysieffer '677 plainly discloses that when the receiving coil is located on the broad side of the housing, the battery is not then located in the housing. Because Leysieffer '677 does not show that the coil is centrally located on a housing proximal face which is co-planar with the major plane of the coil, Leysieffer '677 does not show, disclose or suggest all of the subject matter of claims 1 and 21, as amended.

Leysieffer '677 does not show, disclose or suggest all of the subject matter of claims 1 and 21, as amended. Thus, it is respectfully submitted that the rejections of claims 1 and 21,

as amended, under 35 U.S.C. § 102(e) as being anticipated by Leysieffer '677 are improper and should be withdrawn.

Claims 2 – 17, 19 and 20 depend from claim 1 and as such incorporate all of the subject matter of claim 1, as amended. In addition, claims 2 – 17, 19 and 20 recite additional patentable subject matter. Because the rejection of claim 1, as amended, is improper, and because of the additional patentable subject matter, it is respectfully submitted that the rejections of claims 2 – 7, 19 and 20 under 35 U.S.C. § 102(e) as being anticipated by Leysieffer '677 are improper and should be withdrawn.

Rejection under 35 U.S.C. § 103

Claim 18 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,154,677 ("Leysieffer '677") in view of U.S. Patent No. 5,190,034 ("Sholder '034"). These rejections are respectfully traversed.

The above discussion of claim 1 and of Leysieffer '677 is incorporated in its entirety.

Sholder '034 discloses an implantable arrhythmia system with protection against release of unneeded pulses. Sensor 1 senses a physiological signal from a patient which exhibits a change upon the onset of an arrhythmia (column 3, lines 56 – 58). Alarm generator 5 and inhibit logic 6 react to indications from fibrillation detector 4 (column 4, lines 9 – 26). The output of charging circuit 7 is supplied to output stage 9 to provide therapy to the patient (column 4, lines 27 – 36). The output of fibrillation detector 4 is also supplied to telemetry receiver 11 (column 4, lines 11 – 15) and telemetry transmitter 23, which transmits the signal to the external telemetry receiver 24 (column 6, lines 12 – 21). However, Sholder '034 does not show, disclose or suggest a recharging coil centrally located and substantially carried on a proximal face of the housing, the proximal face of the housing being co-planar with the major plane of the recharging coil. As noted above, Leysieffer '677 similarly does not disclose the feature of centrally locating the recharging coil with respect to the proximal face of the implantable medical device the housing proximal face being co-planar with the major plane of the recharging coil.

Neither Leysieffer '677 nor Sholder '034, alone or in combination, show, disclose or suggest at least one essential element of claim 1, as amended. Thus, claim 1 is not unpatentable under 35 USC § 103(a) over Leysieffer '677 in view of Sholder '034.

Claim 18 depends from independent claim 1 and as such incorporates all of the subject matter of claim 1, as amended. In addition, claim 18 recites additional patentable subject matter. Because claim 1, as amended, is not rejectable, and because of the additional patentable subject matter, it is respectfully submitted that the rejection of claim 18 under 35 USC § 103(a) over Leysieffer '677 in view of Sholder '034 is improper and should be withdrawn.

Summary

In view of the amendments made and the arguments presented, claims 1 – 21 should be allowable, this application should be in condition for allowance and a notice to that effect is earnestly solicited.

Respectfully Submitted,

JOHN E. KAST ET AL.

Date: March 25, 2010

William D. Bauer
Registration No. 28,052

IPLM Group, P.A.
Broadway Place West, Suite 6600
1300 Godward Street NE
Minneapolis, Minnesota 55413-1741
Telephone: 612-331-7405
Facsimile: 612-331-7401